

2022

PR

B-241850.2

October 21, 1991

**DIGEST**

Proof of tender of lost household goods is established for purposes of a prima facie of carrier liability, even though the items were not specifically listed on the carrier's pick-up inventory, where the carrier packed the items and prepared the inventory; the record includes a statement by the shipper reflecting his personal knowledge of the circumstances surrounding the move; and the items are claimed to have been in specific listed cartons with labels that reasonably could include them.

Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Cartwright Van Lines

**File:** B-241850.2

**Date:** October 21, 1991

### DECISION

Cartwright Van Lines appeals our Claims Group's settlement partially denying Cartwright's appeal of a Navy set-off for loss of a service member's household goods. The set-off was based on a finding that the lost items were listed on an inventory prepared by the carrier prior to delivery. Cartwright maintains that the items in fact were not specified on the inventory, so that there is no actual proof that the missing items ever were tendered to the carrier.

We affirm the Claims Group's settlement.

Cartwright generally is correct that the items in issue were not specified on the shipment's inventory. Although the inventory delineates numerous individual items, in many cases it lists cartons by number, and generally describes the cartons' contents; it was in these listed cartons that the shipper claims the items were packed. For example, the shipper specifies that a quilt was missing from a carton labeled "linen"; a waterpik from one labeled "bathroom items"; and a camera and lens from one labeled "storage closet items."

In order for a carrier to be held liable for the loss of a shipper's household items, the shipper must first establish a prima facie case of carrier liability; the first element of a prima facie case is proof that the shipper in fact tendered the lost property to the carrier. Proof of tender shifts the burden to the carrier to prove that it was not liable for the loss. Paul Arpin Van Lines, Inc., B-205084, June 2, 1982. ✓✓

In our view, the facts here are adequate to establish tender for purposes of a prima facie case against the carrier, even

c

though the items claimed lost were not specifically listed on the inventory.

First, as we have made clear in prior decisions concerning the loss of unlisted items, the burden on the shipper would be too onerous if he were required to offer absolute proof of tender. See The Department of the Army--Request for Reconsideration, B-205084, June 8, 1983 ✓ We thus have held that in determining whether an item not specifically listed was tendered we would consider statements by the shipper that reflect his personal knowledge of the circumstances surrounding tender to the carrier. Id. Here, Cartwright was responsible for packing the member's goods and preparing the inventory listing. The record includes a statement by the shipper that the packers did not finish packing when they came 2 days before shipment, and failed to return as scheduled on the moving date to complete the job. As a result, the statement continues, when the movers arrived there still were loose items, and "it was chaotic w/one person keeping track of inventory numbers against three people moving boxes and furniture."

Second, for most of the items in issue the shipper has specified cartons that were labeled on the inventory as containing categories of effects (like "bathroom items") to which the items (like a waterpik) appear directly related. See Aalmode Transportation Corp., B-240350, Dec. 18, 1990 ✓ in which we analyzed prior decisions on the issue involved here, in deciding in favor of the carrier regarding the alleged loss of an unlisted compact disc player from a carton labeled "knickknacks."

Third, even where the relationships are not quite as direct (like the camera alleged missing from the box "storage closet items" and tennis rackets from a box "shed items"), we think they nevertheless are adequate for purposes of a prima facie case against Cartwright. As stated above, Cartwright packed and loaded the member's goods. Presumably, therefore, Cartwright also was responsible for the carton identifications that appear on the inventory. We do not believe it reasonable to conclude from Cartwright's own inventorying and labeling decisions that these items were not tendered to the carrier.

We recognize that the cartons in issue evidently arrived at destination still sealed. We have held, however, that such factor does not automatically relieve a carrier of liability for loss, but instead is an important consideration with respect to establishing tender. See Aalmode Transportation Corp., supra ✓ In our view, the record as described above adequately supports tender to the carrier notwithstanding

the state of the delivered cartons, so that the burden is on Cartwright otherwise to prove its lack of liability. The Claims Group's decision therefore is affirmed.

*James F. Hinchman*

James F. Hinchman  
General Counsel

PROCUREMENT

Payment/Discharge

Shipment

Carrier liability

Burden of proof